IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 845 of 2006.

Decided on: 1.5.2007.

Shri Tilak Raj.

… … … Petitioner.

Versus

General Manager, Chamera Hydroelectric Project and others.

… … … Respondents.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting? No.

For the Petitioner (s): **Mr. K.D. Sood, Advocate.**

For the Respondents: **Mr. R. Maniktala, Advocate.**

Rajiv Sharma, Judge (Oral):

This petition is directed against the award dated 12.1.2006 passed by the H.P. Industrial Tribunal-cum-Labour Court at Dharamshala, District Kangra, H.P.

The brief facts necessary for adjudication of this petition are that the H.P. Government has made a reference to the H.P. Industrial Tribunal-cum-Labour Court, Kangra at Dharamshala on 21st September, 2001 to the following effect:-

> **"Whether the termination of services of Sh. Tilak Raj S/o Sh. Fakiru Ram w.e.f. 13.4.1998 vide order, dated 13.4.1998, by the General Manager, Chamera Hydro**

Whether reporters of local papers may be allowed to see the judgment? No.

Electric Project, Stage-I, Khairi, Distt. Chamba, H.P. is legal and justified? If not, what relief of service benefits, seniority, back-wages and amount of compensation the workman is entitled to?"

The workman has filed claim petition before the Labour Court and has specifically stated in para 4 thereof that he was retrenched without following the mandatory provisions of Section 25-F by the Senior Manager (P&A) on 13.4.1998. The Management has also filed reply to the claim petition.

I have perused the record and heard the parties.

Mr. Kapil Dev Sood has taken me through the pleadings of the parties thoroughly as well as the award dated 12.1.2006. The Labour Court has not touched the very vital part of adjudication concerning the retrenchment of the petitioner. The Labour Court was required to adjudicate upon the core issue referred to it vide Annexure p-12. The Labour Court has passed a very lengthy award, but has not effectively adjudicated upon the plea raised by the petitioner-workman.

Mr. Maniktala while supporting the award has argued that the Labour Court was required to take notice of the earlier litigation between the parties. Mr. Maniktala argues that though after the vacation of stay by this Court, the workman was likely to be retrenched, but inadvertently as per the explanation given in reply to the plaint, the workman was permitted to continue. The plea raised by Mr. Maniktala is not tenable since the Management itself has permitted the workman to complete 240 days and thus he could not be retrenched without following Section 25-F of the Act. The Labour Court after entering into the reference was to adjudicate upon

whether the petitioner-workman has been retrenched in accordance with the provisions of Industrial Disputes Act, 1947 (hereinafter referred to as the "Act") or not. This aspect has not been dealt with by the Labour Court while pronouncing the award.

I am of the firm view that since the adjudication of the reference is not in accordance with law, the Labour Court is required to answer the reference afresh. Accordingly, this petition is allowed and the award dated 12.1.2006 is quashed and set aside. The Labour Court is directed to enter into the reference afresh by hearing the parties. To avoid delay, the parties are directed to make themselves available before the H.P. Industrial Tribunal-cum-Labour Court at Dharamshala, District Kangra on **17th May, 2007.**

(Rajiv Sharma)
Judge

May 1, 2007.
(sck)